PROGRESS OF THE LAW.

As Marked by Decisions Selected from the Advance Reports.

BANKRUPTCY.

In re Fagan, 140 Fed., 758, the United States District Court, South Carolina, holds that while an act providing that "claims shall not be proved against a bankrupt estate subsequent to one year after the adjudication," is an absolute bar to the proving or allowance of a claim after the expiration of a year, where the creditor is chargeable with any laches, it must be construed in the light of the main purpose of the act, which is to secure an equal division of assets between bona fide creditors, and should not be held to bar a just claim, which, owing to peculiar circumstances, could not have been proved within the year.

Time for Filing Claims

The Supreme Court of South Dakota decides in *Juett Bros. & Juett* v. *Bentson*, 105 N. W. 173, that under an act providing that a discharge in bankruptcy shall release a bankrupt from all provable debts, except such as are judgments in actions for fraud or were created by his fraud while acting as an officer or in a fiduciary capacity, a debt created by the fraud of the bankrupt acting in his individual capacity, not having been reduced to judgment, is released by his discharge in bankruptcy. See the previous decision of the same case in 101 N. W. 715 and compare the decision of the United States Supreme Court in *Crawford* v. *Burke*, 195 U. S. 176.

Discharge

CARRIERS.

An important case with reference to the completeness of delivery of baggage to a carrier occurs in *Gregory* v. *Webb*, 89 S. W. 1109. As is generally done in large towns or cities plaintiff contracted with the transfer company to deliver his trunk at a depot. The transfer company's servant placed the trunk in the entrance of the baggage room of the depot company unchecked, without calling it to the attention of any agent of such company, or advising any one to whom the trunk belonged. Thereafter another person mistook the trunk for his own and had it checked out. Under these facts the Court of Civil Appeals of Texas decides that the mere placing of the trunk in the baggage room was not a delivery to the depot company, which did not occur until it was claimed, and that such company was therefore not liable for its loss. With this decision compare *Grosvenor* v. *New York Cent. R. R.* 39 *N. Y.* 34.

Delivery at Depot

CHARITIES.

In *Hegeman's, Ex'rs* v. *Roome*, 62 Atl. 292, the Court of Chancery of New Jersey holds that a bequest to a trustee for the purpose of making such distribution among religious, benevolent, and charitable objects as he may select is void as vague and indefinite. Compare *Hyde* v. *Hyde*, 64 N. Y. Eq. 6.

Indefiniteness

CONSPIRACY.

The Supreme Court of Illinois holds in *Purington* v. *Hinchliff*, 76 N. E. 47, that an agreement not to use, purchase, or lay brick made by any person who does not subscribe to the rules of a builders' association, made for the purpose of injuring the business of such person, is illegal, and the parties thereto are liable for acts done in pursuance thereof and to the damage of the injured person. Compare *Doremus* v. *Hennessy*, 176 Ill. 608; 43 L. R. A. 797.

Boycott: Legality

CONSTITUTIONAL LAW.

The Supreme Court of Nebraska holds in *Halter* v. *State*, 105 N. W. 298, that the power to limit the use of the national flag does not belong exclusively to the Federal Congress but may be exercised by the several states. It can readily be imagined that the validity of the legislation, however, would depend on the reasonableness of the limitation of the use.

Prohibiting Use of Flag

CONTRACTS.

The Supreme Court of Minnesota holds in *Shevlin* v. *Shevlin*, 105 N. W. 257, that there is no presumption of fiduciary relations between brothers, especially where both of them are of mature years and have had experience in the matters of business as to which fraud is alleged. The fact that such confidential relation existed must be affirmatively established by proof. The burden of proof rests upon the party asserting it.

Fiduciary Relations

Against the dissent of one judge, the Court of Appeals of New York holds in *Jacobs* v. *Cohen*, 76 N. E. 5, that a contract between an employer and a labor union whereby the employer agreed to employ for a certain period only members of a union in good standing, and under which contract the union bound itself to furnish the services of its members, is not void as in violation of public policy, so that a note given by the employers to secure the contract and to be applied as liquidated damages on violation thereof is valid. Compare herewith *Curran* v. *Galen*, 152 N. Y. 33, 37 L. R. A. 802.

Union Labor

CORPORATIONS.

The Supreme Court of the United States decides in *First Nat'l Bank of Ottawa* v. *Theodore R. Converse*, 26 S. C. R. 306, that it is ultra vires of a national bank to take stock in a corporation organized to embark in the purely speculative business of buying

Ultra Vires Act

CORPORATIONS (Continued).

and selling the stocks and assets of an existing and insolvent corporation, with power, but without the obligation, to engage, as an independent enterprise in the manufacturing business, although the bank takes such stock in exchange for a claim against the insolvent corporation. Applying this rule it is held that such want of authority of a national bank to subscribe for capital stock in a speculative enterprise is a valid defense to an action against it to enforce its statutory liability as a stockholder.

DAMAGES.

The Supreme Court of North Carolina seems to look with small concern upon the misfortunes of a young married couple, as appears in *Eller* v. *Carolina & W. Ry. Co.*, 52 S. E. 305, where the Court lays down the general rule that mental anguish, experienced by a prospective groom on the damaging by a railroad of the wedding trousseau of the bride to be was too remote a form of damage to entitle the groom to recover therefor against the railroad, which did not know of the intended marriage

Mental Anguish

DEATH.

In order to apply the presumption that a person who has been absent for seven years unheard of is dead, it must be shown of course that inquiry has been made and has been fruitless. This inquiry the Supreme Court of Kansas holds in *Modern Woodmen of America* v. *Gerdom*, 82 Pac. 1100, should extend to all those places where information is likely to be obtained, and to all those persons who in the ordinary course of events would be likely to receive tidings if the party were alive, whether members of his family or not; and, in general, the inquiry should exhaust all patent sources of information,

Presumption from Absence

and all others which the circumstances of the case suggest. Compare *Hitz* v. *Ahlgren*, 170 Ill. 60.

EVIDENCE.

Exhibition of Person

According to the trend of authority the rule seems to be fairly well established that in an action for personal injuries an individual cannot be compelled to submit his person to the examination of a physician or of the jury. A modification of this general rule appears in *Houston & T. C. R. Co.* v. *Anglin*, 89 S. W. 966, where the Supreme Court of Texas holds that where plaintiff, in an action for personal injuries, voluntarily exhibited to the jury his injured chest, it was error to refuse to compel him to exhibit it to a physician who testified that he had examined him shortly after the accident, and that his chest was then deformed, for the purpose of showing by the physician that the same condition which existed at the time of the trial existed immediately after the accident. See in connection herewith *Austin &c. Ry. Co.* v. *Cluck*, 77 S. W. 403.

Corporation Books

In *Harrison* v. *Remington Paper Co.* 140 Fed. 385, the United States Circuit Court of Appeals Eighth Circuit, decides that the books and records of a private corporation are not competent evidence against third persons in the absence of proof of their knowledge and assent to them, to establish their relation of stockholders to the corporation or to prove other contracts between them and it. But an admission of a party against his interest inscribed upon the books of a corporation and signed by him, are as competent and persuasive evidence against him as though they were written elsewhere. Compare *Rudd* v. *Robinson*, 126 N. Y. 113; 12 L. R. A. 473.

LANDLORD AND TENANT.

The Supreme Court of Michigan decides in *Swart v Western Telegraph Co.*, 105 N. W. 74, that where pro-

Leases: Parol Contracts

prietors of a hotel agreed to lease space in their hotel to a telegraph company, and the term, amount of rent, and times of payment were fixed, but no written lease was executed as contemplated, because of a disagreement between the parties as to the extent of the hotel's franking privilege and the hours during which the office should be kept open, there was no such meeting of the minds as to constitute a valid parol lease by which the rights of the parties could be determined during the occupancy of the space by the telegraph company, but its occupancy was under a tenancy at will, terminable upon a month's notice. Compare *Huyser* v. *Chase*, 13 Mich. 98.

LIBEL.

Communications: Privilege

The Supreme Court of North Carolina decides in *Gattis* v. *Kilgo*, 52 S. E. 249, that the publication of the proceedings of a college board of trustees in the investigation of charges against one connected with the college, which pamphlet was intended for circulation among the patrons of the college and among those likely to become such, was qualifiedly privileged, and therefore could not be made the basis of an action for libel in the absence of proof of malice.

MONOPOLIES.

Illegal Combinations

In *White Star Line* v. *Star Line of Steamers*, 105 N. W. 135, the Supreme Court of Michigan decides that a combination between corporations engaged in the public employment of carrying freight and passengers by boat between points in different states, the purpose of which is to create a monoply in the traffic between the points specified, and by which the earnings of the combining corporations are pooled and divided between them in stated proportions, is unlawful and invalid under the Act of Congress known as the "Sherman Act," and that the fact that the contract

MONOPOLIES (Continued).

might be valid as to traffic between points in one of the states does not protect it from being declared invalid under the federal statute.

MUNICIPAL CORPORATIONS.

The Appellate Court of Indiana, Division No. 2, decides in *Collier Shovel & Stamping Co.* v. *City of Washington*, 76 N. W. 122, that a contract by a city to donate a sum of money to a corporation, if it would maintain a factory there for a certain period, is void, and on breach by the corporation the city cannot recover on a bond given by the corporation to secure performance.

Contracts: Validity

PARENT AND CHILD.

With two judges dissenting the Court of Errors and Appeals of New Jersey decides in *James* v. *Aller*, 62 Atl. 427 that a voluntary settlement by a father, after a second marriage, on the children of the first marriage, covering substantially all his property, but executed when he was steadily accumulating money, with knowledge of the effect of the instrument, was not subject to revocation in equity at his instance as improvident. Compare *Garnsey* v. *Mundy*, 24 N. J. Eq. 243.

Gifts. Revocation

In *Texas & P. Ry. Co.* v. *Herbey*, 89 S. W. 1095, the Court of Civil Appeals of Texas decides that where, without his father's consent, an infant is employed in a dangerous service at which he is injured, his father's right to recover is based on his common law rights, and not on the question whether the son could recover in a suit for himself. Compare *Railway Co.* v. *Brick*, 83 Tex., 527.

Injuries to Child

RAILROADS.

In *Western Maryland R. Co.* v. *Blue Ridge Hotel Co. of Washington Co.* 62 Atl. 351, the Court of Appeals of Maryland decides that where a railroad company made an ultra vires contract by which it guaranteed the payment of interest and dividends on the bonds and stock of a hotel company to aid in the improvement of the latter's property, and thereafter received nothing of benefit from the hotel company except increased earnings for transportation of passengers and freight over its road, it was not precluded from subsequently claiming that the contract was ultra vires and void. The decision presents an excellent review of the questions involved. *Compare Johnson* v. *Hines*, 61 Md. 131.

Ultra Vires Contract

STATUTE OF LIMITATIONS.

In *United States to use* v. *Mercantile Trust Co. of Pittsburg, Appellant*, 213 Pa. 411, the Supreme Court of Pennsylvania decides that a surety on a bond under seal is not released from liability on eth bond because the statute of limitations has run against the debt for which the bond was given as security.

Bond: Suretyship

TELEGRAPHS.

An important decision is made by the Supreme Court of Indiana in *Western Union Tel. Co.* v. *State, ex rel. Hammond Co.* 76 N. W. 100, where it is held that where a telegraph company, in the exercise of its charter rights and in connection with its other business, has been engaged in buying continuous quotations of prices of products of a Board of Trade, and selling the same, at a fixed price to such persons as desired them for such a length of time as to make such quotations necessary to the successful conduct of business in such products, the quotations and the system of supplying them have become impressed with the public interest, so that, so long as the company continues in such business, it must supply those desiring

Business Quotations: Discrimination

TELEGRAPHS (Continued).

the quotations on equal terms. Compare *Inter-Ocean Publishing Co.* v. *Associated Press*, 148 Ill. 450; 48 L. R. A. 574.

THEATRE TICKETS.

In *Collister* v. *Hayman*, 76 N. E. 20, the Court of Appeals of New York decides that a clause in a theatre ticket providing that, if sold by the purchaser at the sidewalk, it would be refused at the door, is valid and enforceable as against all subsequent purchasers, where its purpose is to prevent the purchase of tickets by ticket speculators to resell at an advance over the price charged by the management. See in connection herewith the recent decision in Pennsylvania in the case of *Horney* v. *Nixon*, 213 Pa. 20; American Law Register Vol. 54 page 100.

Condition Against Sale

TORTS.

In *Baltimore & O. R. Co.* v. *Chambers*, 76 N. E. 791, the Supreme Court of Ohio holds that no action can be maintained in the courts of that state upon a cause of action for wrongful death occurring in another state, except where the person wrongfully killed was a citizen of the state of Ohio. See in connection with this case *Railroad Co.* v. *Fox*, 64 O. S. 133.

Death by Wrongful Act

WILLS.

With two judges dissenting the Supreme Court of Iowa decides in *Steiff* v. *Seibert*, 105 N. W. 328, that where a life estate with power of disposal is given by will, and provisions as to the power of disposal, no matter how broad, contemplate a possibility that a portion of the property may remain undisposed of, a devise of a remainder in such portion as shall be undisposed of at the termination of the life estate is effective and vests such remainder in the devisee named. See also *Melton* v. *Camp*, 121 Ga. 623.

Devise of Remainder

SALES.

Place of Sale

With one judge dissenting, the Court of Criminal Appeals of Texas decides in *Golightly* v. *State*, 90 S. W. 26, that where the agent of a liquor house took a written C. O. D. order for liquor, the sale was consummated at the point of shipment, and not at the destination notwithstanding an oral agreement that the purchaser need not accept the liquor and that the title should remain in the liquor house until it was paid for. Compare *Vogle* v. *State*, 42 Texas C. R. 389.

PASSENGERS.

When Relation Arises

The Court of Civil Appeals of Texas holds in *Missouri K. & T. Ry. Co. of Texas* v. *Byrd*, 89 S. W. 991, that where a coach was placed near the station for persons to go on board in the evening to await the train, which was to leave several hours later in the night, persons taking passage on such train became passengers on entering such car under the direction of the carrier's agent. See in connection herewith *Allender* v. *Chicago &c. Ry. Co.*, 37 Iowa 264.

MASTER AND SERVANT.

Fellow Servant Rule

The New York Supreme Court, Appellate Division, Third Department, decides in *Hazzard* v. *State*, 95 N. Y. Supp. 1103, that where defective machinery is furnished by the master in violation of the rule that he is bound to use reasonable care in providing his employee with machinery and appliances reasonably safe and suitable for his use, and to keep such machinery and appliances in repair, the rule which exempts the master from liability for injury through the negligence of a fellow servant does not apply.

ICE.

The Supreme Court of Iowa decides in *Board of Park Com'rs of City of Des Moines* v. *Diamond Ice Co.*, 105 N. W. 203, that where the bed of a stream is public property, owners of land bordering on the stream have, as such, no title to the ice that forms thereon, and cannot acquire a vested right to such ice by making improvements on their land or by harvesting ice from the stream for any length of time. The general principle is laid down that the right to take ice from a public stream or to fish therein, or to use the stream for boating, skating and other sports is the subject of reasonable legislative regulations, which should be enacted in order to preserve such right for the benefit of all persons. See in connection herewith *Becker* v. *Hall*, 116 Iowa 589.

Title. Rights of Public

WATERS.

The Court of Chancery of New Jersey decides in *Borough of Washington* v. *Washington Water Co.*, 62 Atl. 390, that a water company, which is the sole source of water supply for a borough is a quasi public corporation bound to supply water to the borough at a reasonable price, to be fixed by a competent tribunal in case no agreement between the parties can be reached. Compare *Public Service Corporation* v. *American Lighting Co.*, 57 Atl. 482.

Public Supply

EASEMENTS.

In *Oney* v. *West Buena Vista Land Co.*, 52 S. E., 343, the Supreme Court of Appeals of Virginia decides that the failure of the owner of an easement, bound to keep it in repair, to do so for an unreasonable length of time, is an abandonment of the easement; an abandonment being presumed on the owner doing or permitting an act to be done which is inconsistent with the future enjoyment of the right. Compare *Scott* v. *Moore*, 98 Va ,668

Abandonment